

Claimant appeared by her attorney Curtis L. Perry of Wichita, Kansas. Respondent and insurance carrier appeared by their attorney Douglas C. Hobbs of Wichita, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge and consists of the transcript of preliminary hearing dated December 28, 1993, and the exhibits attached thereto, along with the transcript of the deposition of C.C. Samuel, M.D., taken December 22, 1993, and the exhibits attached to it.

ISSUES

As a result of a preliminary hearing held on December 28, 1993, Administrative Law Judge Shannon S. Krysl entered an Order dated January 5, 1994, in which the Judge ordered payment of temporary total disability benefits and authorized medical treatment by Tyrone D. Artz, M.D. The respondent and insurance carrier have requested review of that Order and contend the Administrative Law Judge has exceeded her jurisdiction and authority by appointing Dr. Artz as the authorized health care provider rather than giving respondent the right to select the authorized health care provider or permitting respondent to provide claimant a list of three health care providers from which to choose.

The issues before the Appeals Board are :

- (1) Whether the Appeals Board has jurisdiction to review this matter; and
- (2) Whether the Administrative Law Judge exceeded her jurisdiction and authority in authorizing Dr. Tyrone D. Artz to treat claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) The Appeals Board finds that it does not have jurisdiction over this preliminary hearing matter. Therefore, the Order of Administrative Law Judge Shannon S. Krysl dated January 5, 1994, remains in full force and effect.

Before the Appeals Board can exercise jurisdiction over a preliminary hearing matter the issue must be one of those enumerated in K.S.A. 44-534a, or the Administrative Law Judge must have exceeded his or her jurisdiction as required by K.S.A. 44-551. As set forth below, the Appeals Board does not have jurisdiction over this matter under either statute.

K.S.A. 44-534a(2), as amended by the 1993 Kansas Legislature, provides that the following issues are deemed jurisdictional and subject to review by the Appeals Board: 1) Whether the employee suffered an accidental injury; 2) whether the injury arose out of and in the course of employment; 3) whether notice is given and claim timely made; and 4) whether certain defenses apply.

As the issue before the Appeals Board is not one of those enumerated above, the Appeals Board does not have jurisdiction under the provisions of K.S.A. 44-534a. Thus, before the Appeals Board can entertain this review, it must be established that the Administrative Law Judge has exceeded her jurisdiction and authority.

(2) Respondent and insurance carrier contend the Administrative Law Judge exceeded her jurisdiction as she failed to comply with the provisions of K.S.A. 44-510(c)(1). That statute provides:

"If the director finds, upon application of an injured employee, that the services of the health care provider furnished in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider. If the injured employee is unable to obtain satisfactory services from any of the health care providers submitted by the employer under this subsection (c)(1), the injured employee may apply for a benefit review conference for the purpose of obtaining satisfactory health care services...."

Under the facts presented, K.S.A. 44-510(c)(1) is not applicable as this is not a "change of physician" situation. The facts are uncontroverted that respondent failed to select or otherwise provide medical services to claimant prior to the preliminary hearing. As provided in K.S.A. 44-510(b), if the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider, the employee may select the provider, and the employer shall be liable for such expenses subject to the regulations adopted by the director.

The Appeals Board concludes the Order in this case does not exceed the jurisdiction and authority of the Administrative Law Judge. K.S.A. 44-534a provides that the Administrative Law Judge at a preliminary hearing may award medical treatment at respondent's expense. The Appeals Board considers the authority to order medical treatment to include authority to require that treatment be provided with a specific provider. The Appeals Board recognizes the respondent does, in the first instance, have authority to designate the authorized treating provider. When, however, the respondent does not do so and medical care is ordered as a result of a preliminary hearing, the Administrative Law Judge may either direct that the respondent choose a provider or, in the alternative, may designate the provider requested by the claimant.

Based upon the above, the Administrative Law Judge has not exceeded her jurisdiction and authority in designating Tyrone D. Artz, M.D. as the authorized treating health care provider. Therefore, the Appeals Board does not have jurisdiction to review this matter under the provisions of K.S.A. 44-551.

AWARD

WHEREFORE, it is the finding, decision and order of this Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl dated January 5, 1994, remains in full force and effect as the Appeals Board lacks jurisdiction to review same.

IT IS SO ORDERED.

Dated this ____ day of March, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Curtis L. Perry, 200 W Douglas, Suite 630, Wichita, Kansas 67202
Douglas C. Hobbs, 600 Epic Center, 301 N Main, Wichita, Kansas 67202
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director